

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 GEORGE JOHNSON,

11 Plaintiff,

12 v.

13 DONALD P. WANG, et al.,

14 Defendants.

CASE NO. C16-1738JLR

ORDER ON MOTION FOR
PARTIAL SUMMARY
JUDGMENT

15 **I. INTRODUCTION**

16 Before the court is Plaintiff George Johnson's motion for partial summary
17 judgment against *in personam* Defendant Donald P. Wang, who is proceeding *pro se*.
18 (Mot. (Dkt. # 24).) Mr. Wang opposes the motion. (Resp. (Dkt. # 25).) The court has
19 reviewed the motion, the parties' submissions in support of and in opposition to the
20 motion, the relevant portions of the record, and the applicable law. Being fully advised,¹

21
22 ¹ Neither party requested oral argument, and the court finds that oral argument would not
be helpful to the court's disposition of the motion. *See* Local Rules W.D. Wash. LCR 7(b)(4).

1 the court DENIES Mr. Johnson’s motion for partial summary judgment for the reasons
2 set forth below.

3 II. BACKGROUND

4 On November 10, 2016, Mr. Johnson filed this lawsuit against Mr. Wang and *in*
5 *rem* Defendant the F/V Thor (“the Thor”)—a fishing vessel. (Compl. (Dkt. # 1).) Mr.
6 Johnson alleges that Mr. Wang failed to pay him \$7,380.00 in wages for 492 hours of
7 work converting the Thor into a tuna boat and failed to fulfill his promise to let Mr.
8 Johnson master the Thor during the tuna fishing season. (*Id.* ¶¶ 4-6.) Mr. Johnson
9 asserts no specific causes of action (*see generally id.*) but seeks the following relief: the
10 arrest, condemnation, and sale of the Thor; compensatory, double, and punitive damages
11 for Mr. Wang’s alleged failure to pay wages; prejudgment interest; and attorney’s fees
12 and costs (*id.* ¶¶ 7-8).

13 On July 11, 2017, Mr. Johnson moved for partial summary judgment against Mr.
14 Wang for the alleged unpaid wages.² (Mot. at 1.) In support of his motion, Mr. Johnson
15 proffers his declarations and Mr. Wang’s deposition testimony. (*See generally* MDJ
16 (Dkt. # 17) at 1, Ex. 1 (“1st Johnson Decl.”); Mot. at 2, Ex. A (“Wang Dep.”); Errata
17 (Dkt. # 28), Ex. 1 (“2d Johnson Decl.”).)³

18
19 ² In his reply brief, Mr. Johnson reduces his claim for wages from \$15.00 per hour to
\$12.00 per hour for a total of \$5,904.00. (Reply (Dkt. # 27) at 3.)

20 ³ Mr. Wang objects to Mr. Johnson’s use of the deposition as evidence, claiming that he
21 reserved signature on the deposition and has not been able to contact the court reporter to verify
22 its accuracy. (Resp. at 1; Wang Decl. (Dkt. # 26) at 1.) In the alternative, if the court considers
the deposition, he argues that it shows only that he consistently testified that he never contracted
with Mr. Johnson or authorized any of the work Mr. Johnson claims he performed. (Resp. at 1;

1 According to Mr. Johnson, he entered into an oral contract with Mr. Wang to
2 prepare the Thor for the 2016 tuna fishing season.⁴ (Mot. at 1; 1st Johnson Decl. ¶ 6.)
3 Mr. Johnson claims that Mr. Wang promised that he could skipper the boat for a 20%
4 crewshare if Mr. Johnson agreed to work at a rate of \$15.00 per hour restoring the Thor
5 and converting her into a tuna jig boat. (1st Johnson Decl. ¶¶ 4-5.) Based on this
6 understanding, Mr. Johnson contends that he performed 492 hours of shipyard work on
7 the Thor during the summer of 2016. (*Id.* ¶ 5.) However, Mr. Johnson asserts that once
8 he completed the work, Mr. Wang put the Thor up for sale and did not pay him. (*Id.* ¶ 8.)

9 In opposition to Mr. Johnson's motion, Mr. Wang presents a differing version of
10 events. (*See generally* Wang Decl.) According to Mr. Wang, he never contracted with
11 Mr. Johnson or authorized any of the work Mr. Johnson contends he did. (*Id.* at 1.) Mr.
12 Wang testifies that the Thor was ready to go fishing when he bought her, and he did not
13 know whether Mr. Johnson performed any work on her. (*See* Wang Dep. at 23:20,
14

15 Wang Decl. at 1.) Mr. Johnson argues the deposition is now sealed because Mr. Wang failed to
16 review it on time, and it is too late for him to change his testimony. (Reply at 1.) Upon request
17 by the deponent under Federal Rule of Civil Procedure 30(e), the deponent must be allowed 30
18 days to review the transcript after being notified by the court reporter that the deposition
19 transcript is available. Fed. R. Civ. P. 30(e). If there are changes in form or substance, the
20 deponent must then sign a statement listing the changes and the reasons for making them. *Id.* In
21 this case, Mr. Wang reserved signature on the deposition. (Wang Dep. at 43:13.) However, the
22 court reporter's letter to Mr. Johnson's counsel states that Mr. Wang's signature is deemed
waived because he did not respond or schedule a time for transcript review within 30 days.
(Reply at 1, Ex. A-1.) Accordingly, the court considers the deposition in ruling on Mr.
Johnson's motion.

⁴ Although Mr. Johnson does not explicitly state in his complaint that his alleged
agreement with Mr. Wang was an oral contract (*see generally* Compl.), Mr. Johnson refers to it
as such in his motion (Mot. at 1). Thus, the court treats the alleged agreement as an oral
contract.

1 25:14.) He also testifies that Mr. Johnson had been on the Thor, but only to evaluate the
2 vessel for going fishing. (*See id.* at 22:10-13.) Mr. Wang also contends that he had no
3 reason to check whether any work was done because he never authorized any work on the
4 Thor, but admits that Mr. Johnson could have performed work without his authorization.
5 (Wang Decl. at 2.) Mr. Wang further contests Mr. Johnson’s claim that Mr. Johnson
6 worked on the Thor in June and early July 2016 because Mr. Wang did not purchase the
7 Thor until later that July. (*See id.* at 2; *see also* Wang Dep. at 12:25-13:2; 1st Johnson
8 Decl. ¶ 6, Ex. 7.)

9 The court now addresses the motion.

10 **III. ANALYSIS**

11 At the outset, the court notes that the basis for Mr. Johnson’s motion is unclear.
12 Mr. Johnson states only that he seeks partial summary judgment on his claim for unpaid
13 wages because “[s]eamen are entitled to quantum meruit compensation for work
14 performed in anticipation of a fishing season before the contracts required by 46 U.S.C.
15 § 10601 are executed.” (*See* Mot. at 4.) He further states in his moving brief that a
16 “more equitable quantum meruit rate can be determined at a later time” (*id.*), but then
17 states in his reply that “this motion is limited to a demand for quantum meruit wages”
18 (Reply at 2). Based on the nature of Mr. Johnson’s briefing, the court assumes that Mr.
19 Johnson seeks quantum meruit compensation pursuant to 46 U.S.C. § 11107 based on an
20 alleged oral contract. The court therefore assesses whether the parties formed an oral
21 contract and if so, whether quantum meruit recovery is appropriate. *See Dunn v. Hatch*,
22 No. 1:15-cv-00479-BLW, 2017 WL 1839279, at *1 (D. Idaho May 8, 2017) (“[M]aritime

1 law penalizes ship owners for failing to enter into written contracts by awarding deck
2 hands enhanced damages when they prove they had only an oral contract, and that it was
3 breached.” (citing 46 U.S.C. § 10601)).

4 To the extent that Mr. Johnson intended to argue some other basis for summary
5 judgment, Mr. Johnson was responsible for making that clear to the court. The fact that
6 Mr. Johnson cites only scant legal authority only amplifies the lack of clarity. (*See*
7 *generally* Mot.) Indeed, he cites only three sources to support his motion—a case from
8 the High Court of American Samoa and two maritime treatises—none of which are
9 particularly helpful to the court’s disposition. (*See id.* at 4.) In this regard, Mr. Johnson’s
10 brief falls below the minimum standards for practice in this court. The court expects a
11 party to clearly state the basis for its motion and, when the party makes a statement in a
12 brief about what the law is, to follow that statement by a citation to specific legal
13 authority. With this context in mind, the court addresses Mr. Johnson’s motion as set
14 forth above.

15 **A. Legal Standard**

16 Summary judgment is appropriate if the evidence, when viewed in the light most
17 favorable to the nonmoving party, demonstrates “that there is no genuine dispute as to
18 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ.
19 P. 56(a)⁵; *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. Cty. of L.A.*,

20
21 ⁵ The Federal Rules of Civil Procedure apply to suits in admiralty. *See Craig v. United*
22 *States*, 413 F.2d 854, 856 n.2 (9th Cir. 1969) (“While there are some kinds of civil proceedings
in which the Federal Rules of Civil Procedure do not apply, the rules do apply in suits in
admiralty . . .”).

1 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of showing
2 there is no genuine dispute of material fact and that he is entitled to prevail as a matter of
3 law. *Celotex*, 477 U.S. at 323. If the moving party meets his burden, then the
4 nonmoving party “must make a showing sufficient to establish a genuine dispute of
5 material fact regarding the existence of the essential elements of his case that he must
6 prove at trial” in order to withstand summary judgment. *Galen*, 477 F.3d at 658. In
7 determining whether the factfinder could reasonably find for the nonmoving party, “the
8 court must draw all reasonable inferences in favor of the nonmoving party, and it may not
9 make credibility determinations or weigh the evidence.” *Reeves v. Sanderson Plumbing*
10 *Prods., Inc.*, 530 U.S. 133, 150 (2000). Summary judgment is not appropriate “where a
11 trial, with its opportunity for cross-examination and testing the credibility of witnesses,
12 might disclose a picture substantially different from that given by the affidavits.” *United*
13 *States v. Perry*, 431 F.2d 1020, 1022 (9th Cir. 1970).

14 **B. Mr. Johnson’s Claim**

15 Title 46 U.S.C. § 10601 provides that “[b]efore proceeding on a voyage, the
16 owner . . . of a fishing vessel . . . shall make a fishing agreement in writing with each
17 seaman employed on board” if the vessel meets certain qualifications. 46 U.S.C.
18 § 10601(a)(1)-(2). The written agreement must “include the terms of any wage, share, or
19 other compensation arrangement peculiar to the fishery in which the vessel will be
20 engaged during the period of the agreement.” *Id.* § 10601(b)(2). If the owner of the
21 vessel fails to execute the required written agreement and instead enters into an oral
22 contract, a seaman “may avail [himself] of the protection afforded seamen by 46 U.S.C.

1 § 11107.” *TWC Special Credits v. Chloe Z Fishing Co., Inc.*, 129 F.3d 1330, 1333 (9th
2 Cir. 1997); *see also Dunn*, 2017 WL 1839279, at *1. If Section 11107 applies, the
3 seaman “is entitled to recover the highest rate of wages at the port from which the seaman
4 was engaged or the amount agreed to be given the seaman at the time of engagement,
5 whichever is higher.” 46 U.S.C. § 11107. This form of compensation appears to be what
6 Mr. Johnson refers to as quantum meruit compensation. (*See Mot.* at 4.)

7 “When a contract is a maritime contract and the dispute is not inherently local,
8 federal law controls basic contract interpretation.” *Crowley Marine Serv., Inc. v. Vigor*
9 *Marine LLC*, 17 F. Supp. 3d 1091, 1094 (W.D. Wash. 2014) (citing *N. Pac. S.S. Co. v.*
10 *Hall Bros. Marine R. & Shipbuilding Co.*, 249 U.S. 119, 128 (1919)); *see also Royal Ins.*
11 *Co. of Am. v. Pier 39 Ltd. P’ship*, 738 F.2d 1035, 1036 (9th Cir. 1984) (citing *Ins. Co. v.*
12 *Dunham*, 78 U.S. 1, 26 (1871)) (“A contract falls within the court’s admiralty jurisdiction
13 “if [the contract’s] subject matter is maritime.”). “Basic principles in the common law of
14 contracts readily apply in the maritime context,” *Clevo Co. v. Hecny Transp., Inc.*, 715
15 F.3d 1189, 1194 (9th Cir. 2013), and “oral contracts are generally regarded as valid by
16 maritime law,” *Kossick v. United Fruit Co.*, 365 U.S. 731, 734 (1961).⁶

17 The Ninth Circuit applies the *Restatement (Second) of Contracts* to determine
18 whether the requisite contract elements of “offer, acceptance, and consideration” are
19 present. *Id.* “The formation of a contract requires a bargain in which there is a
20

21 ⁶ Because federal maritime law governs the validity of an oral contract falling under
22 admiralty jurisdiction, the court does not utilize Washington law to assess the validity of the
contract Mr. Johnson alleges. *See id.* at 742.

1 manifestation of mutual assent to the exchange and a consideration.” *Casa del Caffè*
2 *Vergnano S.P.A. v. ItalFlavors, LLC*, 816 F.3d 1208, 1212 (9th Cir. 2016). The court
3 first addresses whether Mr. Johnson has demonstrated the existence of an oral contract as
4 a matter of law, followed by quantum meruit compensation for any such contract.

5 Mr. Johnson argues for summary judgment on the alleged oral contract for unpaid
6 wages because Mr. Wang fails to contradict Mr. Johnson’s allegations of the hours and
7 work performed “at a wage of at least \$15 per hour.” (Mot. at 1 (emphasis omitted)
8 (citing Fed. R. Civ. P. 56(a)).) Specifically, Mr. Johnson points to Mr. Wang’s testimony
9 that Mr. Wang did not know or recall whether he offered Mr. Johnson the captain’s job,
10 whether Mr. Johnson performed any work on the Thor, whether he authorized Mr.
11 Johnson to work on the Thor, or whether he asked Mr. Johnson to get a crew for the
12 Thor. (See Mot. at 2-3; Wang Dep. at 22:16, 25:14, 26:5, 7-8, 29:12.) In short, Mr.
13 Johnson’s arguments in support of summary judgment boil down to his view that Mr.
14 Wang is “stone walling this wage claim” and “waffling” in his testimony. (*Id.* at 2-3.)

15 Mr. Wang opposes summary judgment due to “disputed factual issues on all major
16 issues in this suit including whether a contract was ever formed or whether any work was
17 authorized.” (Resp. at 1; *see also* Wang Decl. at 1.) Further, Mr. Wang explains that he
18 cannot recall whether he offered Mr. Johnson the captain’s job on the Thor, and if he did,
19 what conditions the offer would have been based on. (See Resp. at 2; Wang Decl. at 2;
20 *see also* Wang Dep. at 22:16.) He states that if he had made such an offer, one condition
21 would have been that Mr. Johnson assemble a viable crew, which was never done.
22 (Resp. at 2; Wang Decl. at 2.)

1 For Mr. Johnson to meet his initial burden, he must show that there is no genuine
2 dispute of material fact regarding the existence of an oral contract with Mr. Wang and
3 that he is entitled to prevail on his claim as a matter of law. *See* Fed. R. Civ. P. 56(a);
4 *Celotex*, 477 U.S. at 323. When viewed in the light most favorable to Mr. Wang, Mr.
5 Wang’s testimony that he did not enter into an oral contract with Mr. Johnson or
6 authorize Mr. Johnson to perform work on the Thor demonstrates a genuine dispute of
7 material fact when compared with Mr. Johnson’s account. (*Compare* Mot. at 1 (citing 1st
8 Johnson Decl. ¶¶ 4-6) (“In exchange for [Mr.] Wang’s promise that [Mr.] Johnson could
9 skipper the boat for the tuna season at a 20% crewshare, [Mr.] Johnson agreed to perform
10 the re-fit, pre-season shipyard work at the bargain-basement rate of \$15[.00]/hour.”), *with*
11 Wang Decl. at 1 (“I never contracted with [Mr. Johnson] nor did I authorize any work
12 that [Mr. Johnson] claims he performed.”).) Mr. Wang testified that he did not know or
13 recall whether he offered Mr. Johnson the captain’s job, whether Mr. Johnson performed
14 any work on the Thor, or whether he asked Mr. Johnson to assemble a crew. (*See* Wang
15 Dep. at 22:16, 25:14, 29:12.) Accordingly, there is a genuine dispute of material fact
16 regarding whether the two men formed an oral contract and if such they formed a
17 contract, what its terms are. (*See* 1st Johnson Decl. ¶ 5.) Summary judgment is therefore
18 inappropriate on Mr. Johnson’s claim of an oral contract for wages.⁷

19
20 ⁷ Mr. Johnson raises unjust enrichment for the first time in his reply brief, perhaps as an
21 alternative to the existence of an oral contract. (*See* Reply at 2 (“[Mr.] Wang bought the boat for
22 \$25,000[.00]. He does not deny that he put the Thor up for sale for \$80,000[.00]. That’s called
unjust enrichment.”) (internal citation omitted).) Mr. Johnson’s argument is not properly
presented, however, because he raises a new theory of liability for the first time on reply. *See*
Coleman v. Quaker Oats Co., 232 F.3d 1271, 1292 (9th Cir. 2000) (declining to allow the

1 The court is mindful of the inconsistencies in Mr. Wang's testimony. (*See, e.g.,*
2 Wang Dep. at 25:14, 26:7-8 (testifying that Mr. Johnson performed some work that Mr.
3 Johnson said he would want on the Thor after testifying that Mr. Wang did not know if
4 Mr. Johnson performed any work on the Thor); *id.* at 27:20, 28:23 (testifying that he
5 "[p]ossibly" could have put the Thor up for sale after stating that he did not put the Thor
6 up for sale).) However, those inconsistencies raise questions regarding Mr. Wang's
7 credibility, something the court may not pass judgment on at this stage.⁸ *See Reeves*, 530
8 U.S. at 150. "When opposing parties tell two different stories, one of which is blatantly
9 contradicted by the record, so that no reasonable jury could believe it, a court should not
10 adopt that version of the facts for purposes of ruling on a motion for summary judgment."
11 *Scott v. Harris*, 550 U.S. 372, 380 (2007). Although Mr. Johnson and Mr. Wang tell two
12

13 plaintiffs to proceed with a new theory of recovery raised at the summary judgment phase after
14 two years of discovery because adding a new theory would prejudice the defendants); *Best W.*
15 *Int'l, Inc. v. AV Inn Assocs. I, LLC*, No. CV-08-2274-PHX-DGC, 2010 WL 2789895, at *3 (D.
16 Ariz. July 14, 2010) ("Both district courts and the Ninth Circuit have regularly held that
17 arguments made for the first time in a reply brief should not be considered."). Even if the
18 argument were properly before the court, Mr. Johnson does not demonstrate a benefit or
inequitable circumstances as a matter of law. *See Dragt v. Dragt/DeTray, LLC*, 161 P.3d 473,
482 (Wash. Ct. App. 2007) (To prove unjust enrichment, "(1) there must be a benefit conferred
on one party by another; (2) the party receiving the benefit must have an appreciation or
knowledge of the benefit; and (3) the receiving party must accept or retain the benefit under
circumstances that make it inequitable for the receiving party to retain the benefit without paying
its value.").

19 ⁸ The court also notes that it "need not credit conclusory assertions that a fact is in dispute
20 when they are not supported with citations to the record or argument suggesting the existence of
21 a genuine dispute." *Rodriguez v. JLG Indus., Inc.*, No. CV 11-04586 MMM (SHx), 2012 WL
22 12883784, at *1 n.9 (C.D. Cal. Aug. 3, 2012). Rather than making conclusory assertions,
however, Mr. Wang relies on evidence—his deposition testimony and declaration—to argue that
he never contracted with Mr. Johnson or authorized his alleged work. (*See Resp.* at 1; Wang
Decl. at 1.) Summary judgment is inappropriate because Mr. Johnson does not meet his initial
burden of showing there is no genuine dispute of material fact.

1 different stories, and some of Mr. Wang's testimony is contradictory, the record does not
2 "blatantly contradict[]" either of the party's stories, *see id.*, particularly here because the
3 record consists primarily of the parties' declarations and Mr. Wang's deposition
4 testimony. As a result, the parties' differing versions of events create a genuine dispute
5 of material fact.

6 Mr. Johnson further argues that he is entitled to quantum meruit compensation
7 based on the oral contract because seamen may recover "for work performed in
8 anticipation of a fishing season before the [written] contracts required by 46 U.S.C.
9 § 10601 are executed." (Mot. at 4. (citing *TCW Special Credits, Inc. v. F/V Kassandra Z*,
10 1999 A.M.C. 2967 (High Ct. Am. Samoa 1999)).) Mr. Johnson fails to establish as a
11 matter of law that he is entitled to such compensation because he fails to demonstrate the
12 existence of an oral contract as a matter of law. *See Dunn*, 2017 WL 1839279, at *1
13 ("[M]aritime law penalizes ship owners for failing to enter into written contracts by
14 awarding deck hands enhanced damages when they prove they had only an oral contract,
15 and that it was breached."). Because an oral contract is antecedent to recovery, *see* 46
16 U.S.C. § 10601; *id.* § 11107, the fact that Mr. Johnson cannot prove an oral contract at
17 this time is fatal to his claim for quantum meruit compensation.

18 To the extent that Mr. Johnson moves for summary judgment on a common law
19 theory of quantum meruit, his motion also fails. Federal courts may apply state law to
20 theories of quantum meruit recovery in maritime contract actions.⁹ *See, e.g., Muller Boat*

21
22 ⁹ State law may supplement federal admiralty law "so long as state law does not actually
conflict with federal law or interfere with the uniform working of the maritime legal system."

1 *Works, Inc. v. Unnamed 52' House Barge*, 464 F. Supp. 2d 127, 141 (E.D.N.Y. 2006)
2 (applying New York law to examine whether plaintiff was entitled to compensation for
3 services rendered on a vessel under a quantum meruit theory after assessing plaintiff's
4 oral contract claim under maritime law); *Madeja v. Olympic Packer, LLC*, 155 F. Supp.
5 2d 1183, 1210 (D. Haw. 2001) (applying Hawaii law to examine whether plaintiffs were
6 entitled to compensation for work on a vessel after a voyage under a quantum meruit
7 theory after assessing plaintiffs' oral contract claim under maritime law). Washington
8 defines "quantum meruit" as "the method of recovering the reasonable value of services
9 provided under a contract implied in fact." *Young v. Young*, 191 P.3d 1258, 1262 (Wash.
10 2008). "[T]he elements of a contract implied in fact are: (1) the defendant requests work,
11 (2) the plaintiff expects payment for the work, and (3) the defendant knows or should
12 know the plaintiff expects payment for the work." *Id.* at 1263.

13 Mr. Wang consistently disputed that he requested Mr. Johnson's work on the
14 Thor. (*See* Wang Dep. at 22:7, 26:7-8, 31:3; *see also* Wang Decl. at 1-2.) As addressed
15 in assessing Mr. Johnson's oral contract claim, despite allowing that Mr. Johnson "did
16 some work that [Mr. Johnson] said he would want on the Thor," Mr. Wang maintained
17 that he did not ask Mr. Johnson to do that work. (*Id.* at 26:7-8 ("He did some
18 work . . . which I didn't ask him to.")) Mr. Wang's testimony creates a genuine dispute
19 of material fact regarding the first element of a common law quantum meruit claim.
20 Because of this dispute, summary judgment is inappropriate.

21 _____
22 *Pac. Merchant Shipping Ass'n v. Aubry*, 918 F.2d 1409, 1422 (9th Cir. 1990) (emphasis
omitted).

1 To summarize, Mr. Johnson fails to demonstrate the existence of an oral contract
2 and his entitlement to quantum meruit compensation arising from such a contract, and the
3 court accordingly denies summary judgment.

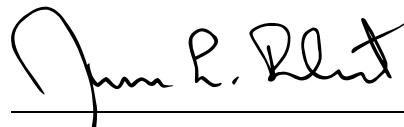
4 **C. Request for Redaction**

5 Mr. Wang requests that the court seal his social security number, which is
6 included in exhibit A to Mr. Johnson's motion. (*See* Resp. at 4 (citing Wang Dep. at
7 5:23).) The court also notes that Mr. Wang's date of birth is listed in the exhibit. (Wang
8 Dep. at 5:21.) Under Local Civil Rule 5.2(a), parties shall redact social security numbers
9 in their entirety and birth dates to the year of birth from all documents filed with the
10 court. *See* Local Rules W.D. Wash. LCR 5.2(a). Accordingly, the court directs the Clerk
11 to seal exhibit A to Mr. Johnson's motion and Mr. Johnson to file a properly redacted
12 version of exhibit A within five days of the date of this order.

13 **IV. CONCLUSION**

14 For the foregoing reasons, the court DENIES Mr. Johnson's motion for partial
15 summary judgment (Dkt. # 24). In addition, the court DIRECTS the Clerk to seal exhibit
16 A to Mr. Johnson's motion (Dkt. # 24-1) and DIRECTS Mr. Johnson to file a properly
17 redacted version of exhibit A within five (5) days of the date of this order.

18 Dated this 31st day of October, 2017.

19
20 

21 JAMES L. ROBART
22 United States District Judge